

of facilities to the donor, the qualification of all or any part of such payment or transfer as a contribution under section 170(c) shall determine whether and to what extent such payment or transfer constitutes a *contribution* under section 507(d)(2).

(2) *Valuation of contributions and bequests.* Each contribution or bequest to a private foundation shall be valued at fair market value when actually received by the private foundation.

(3) *Contributions and bequests by a spouse.* An individual shall be considered, for purposes of this section, to have made all contributions and bequests made by his spouse during the period of their marriage. Thus, for example, where W contributed \$500,000 to P, a private foundation, in 1941 and that amount exceeded 2 percent of the total contributions received by P as of the end of P's first taxable year ending after October 9, 1969, H (W's spouse at the time of the 1941 gift) is considered to have made such contribution (even if W died prior to October 9, 1969, or their marriage was otherwise terminated prior to such date). Similarly, any bequest or devise shall be treated as having been made by the decedent's surviving spouse.

[T.D. 7241, 37 FR 28743, Dec. 29, 1972; 38 FR 24206, Sept. 6, 1973]

§ 1.507-7 Value of assets.

(a) *In general.* For purposes of section 507(c), the value of the net assets shall be determined at whichever time such value is higher:

(1) The first day on which action is taken by the organization which culminates in its ceasing to be a private foundation, or

(2) The date on which it ceases to be a private foundation.

(b) *Valuation dates.* (1) In the case of a termination under section 507(a)(1), the date referred to in paragraph (a)(1) of this section shall be the date on which the terminating foundation gives the notification described in section 507(a)(1).

(2) In the case of a termination under section 507(a)(2), the date referred to in paragraph (a)(1) of this section shall be the date of occurrence of the willful and flagrant act (or failure to act) or the first of the series of willful re-

peated acts (or failures to act) giving rise to liability for tax under chapter 42 and the imposition of tax under section 507(a)(2).

(c) *Fair market value.* For purposes of this section, fair market value shall be determined pursuant to the provisions of § 53.4942(a)-2(c)(4) of this chapter.

(d) *Net assets.* For purposes of section 507 and the regulations thereunder, the term *net assets* shall mean the gross assets of a private foundation reduced by all liabilities of the foundation, including appropriate estimated and contingent liabilities. Thus, a determination of net assets may reflect reductions for any liability or contingent liability for tax imposed upon the private foundation under chapter 42 with respect to acts or failures to act prior to termination, for any liability or contingent liability for failures to correct such acts or failures to act, or for any liability or estimated or contingent liability with respect to expenses associated with winding up the organization. If a private foundation's determination of net assets reflects any reduction for any estimated or contingent liability, such private foundation must establish, to the satisfaction of the Commissioner, the reasonableness of such reduction. If the amount of net assets reflects a reduction for any estimated or contingent liability, at the earlier of the final determination of the contingency or the termination of a reasonable time, any excess of the amount by which the gross assets was reduced over the amount of the liability shall be treated in the same manner as if such excess had been considered part of the net assets.

[T.D. 7233, 37 FR 28161, Dec. 21, 1972]

§ 1.507-8 Liability in case of transfers.

For purposes of determining liability for the tax imposed under section 507(c) in the case of assets transferred by the private foundation, such tax shall be deemed to have been imposed on the first day on which action is taken by the organization which culminates in its ceasing to be a private foundation. If an organization's private foundation status is terminated under section 507(a)(2), the first day on which action is taken which culminates in its ceasing to be a private foundation (within

the meaning of section 507(f)) shall be the date described in § 1.507-7(b)(2). If an organization terminates its private foundation status under section 507(a)(1), the first day on which action is taken which culminates in its ceasing to be a private foundation (within the meaning of section 507(f)) shall be the date described in § 1.507-7(b)(1).

[T.D. 7233, 37 FR 28161, Dec. 21, 1972]

§ 1.507-9 Abatement of taxes.

(a) *General rule.* The Commissioner may at his discretion abate the unpaid portion of the assessment of any tax imposed by section 507(c), or any liability in respect thereof, if:

(1) The private foundation distributes all of its net assets to one or more organizations described in section 170(b)(1)(A) (other than in clauses (vii) or (viii)) each of which has been in existence and so described for a continuous period of at least 60 calendar months, or

(2) Effective assurance is given to the Commissioner in accordance with paragraphs (b) and (c) of this section that the assets of the organization which are dedicated to charitable purposes will, in fact, be used for charitable purposes

The provisions of § 1.507-2(a) (2), (3), and (7) shall apply to distributions under subparagraph (1) of this paragraph. Since section 507(g) provides only for the abatement of tax imposed under section 507(c), no tax imposed under any provision of chapter 42 shall be abated under section 507(g). Where the taxpayer files a petition with the Tax Court with respect to a notice of deficiency regarding any tax under section 507(c), such tax shall be treated as having been assessed for the purposes of abatement of such tax under section 507(g) and the regulations thereunder.

(b) *State proceedings.* (1) The Commissioner may at his discretion abate the unpaid portion of the assessment of any tax imposed by section 507(c), or any liability in respect thereof, under the procedures outlined in subparagraphs (2) and (3) of this paragraph. Such tax may not be abated by the Commissioner unless he determines that corrective action as defined in paragraph (c) of this section has been

taken. The Commissioner may not abate by reason of section 507(g) any amount of such tax which has already been collected since only the unpaid portion thereof can be abated.

(2) The appropriate State officer shall have 1 year from the date of notification prescribed in section 6104(c) that a notice of deficiency of tax imposed under section 507(c) has been issued with respect to a foundation, to advise the Commissioner that corrective action has been initiated pursuant to State law as may be ordered or approved by a court of competent jurisdiction. Corrective action may be initiated either by the appropriate State officer or by an organization described in section 509(a) (1), (2), or (3) which is a beneficiary of the private foundation and has enforceable rights against such foundation under State law. Copies of all pleadings and other documents filed with the court at the initial stages of the proceedings shall be attached to the notification made by the State officer to the Commissioner. Prior to notification by the appropriate State officer that corrective action has been initiated, the Commissioner shall follow those procedures which would apply with respect to the assessment and collection of the tax imposed under section 507(c) without regard to section 507(g)(2). Subsequent to notification by the appropriate State officer that corrective action has been initiated, the Commissioner shall suspend action with respect to the assessment or collection of tax imposed under section 507(c) until notified of the final determination of such corrective action, as long as any such resulting delay does not jeopardize the collection of such tax and does not cause collection to be barred by operation of law or any rule of law. In any case where collection of such tax is about to be barred by operation of section 6502 and the Commissioner has not been advised of the final determination of corrective action, the Commissioner should make every effort to obtain appropriate agreements with the foundation subject to such tax to extend the period of limitations under section 6502(a)(2). Where such agreements are obtained, action with respect to the assessment and collection of such tax may be suspended to